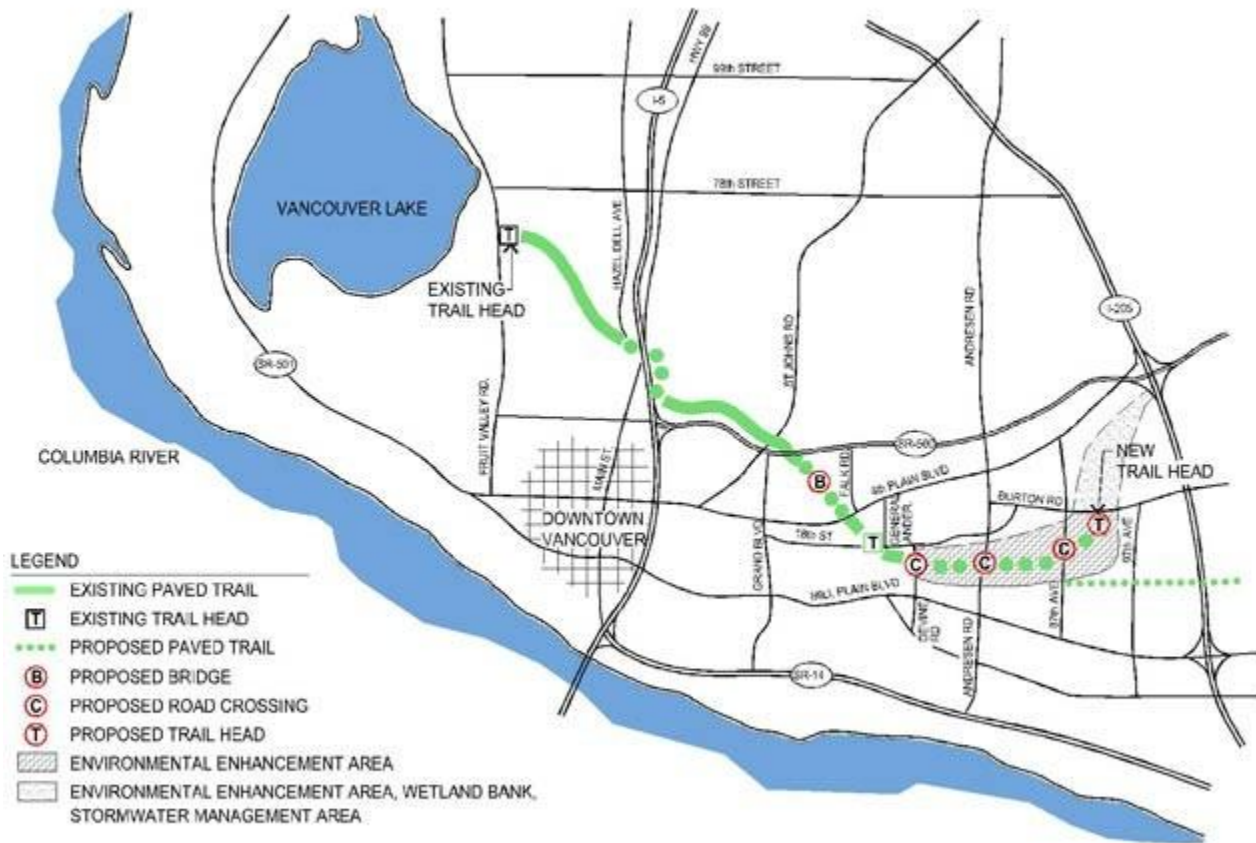


## Public Hearing: Burnt Bridge Creek Greenway Project

On March 16, 2004, members of the Rosemere Neighborhood Association and other concerned neighbors attended a hearing at the City Council chambers in Vancouver regarding the City of Vancouver's [Burnt Bridge Creek Greenway project](#).



According to the *Staff Report and Recommendation to the Hearings Examiner*, "The project includes the construction of approximately 3 miles of new public trails to create linkages to existing trail segments, a new restroom facility, a vehicle parking lot, five stream crossings, wetland mitigation and habitat improvement areas, wetland fill, and water quality facilities."



The Rosemere Neighborhood Association opposes this project for a multitude of reasons, as outlined below. We are presenting the entirety of our rebuttals here. A decision from the hearings examiner, Richard Forester, is expected after Wednesday, March 24, 2004.

- Part 1 – Introduction. The Burnt Bridge Creek Greenway project application, as written, **violates** the Shoreline Master Program (as overseen by the state) various ways.
- Part 2 – The building of trails and bridges in a flood plain is in violation of this policy as well as the shoreline master program, especially since the wetland is **not properly classified**.
- Part 3 – The City categorizes the project area as a Class 3 watershed. The Joint Aquatic Resource Permits Application process **does not allow** the WA Dept. of Fish & Wildlife to review whether the classification is **accurate**.
- Part 4 – This project **does not incorporate** street drainage policies to the impervious trails or bridges in the design. This surface water policy **does not indicate** goals to address surface water quality or ways to address contamination.
- Part 5 – The Burnt Bridge Greenway Project, as proposed, **does not follow** any sort of approved water quality management plan (208 plan or other plan).
- Part 6 – Burnt Bridge Creek is 303(d) listed, and it is **not safe for human contact**.
- Part 7 – This permit needlessly places trails in areas that are **environmentally sensitive**.
- Part 8 – The city should seek to use as much of the Bonneville Power Administration corridor in this area as possible and **refrain** from the extensive trail looping system to ensure proper environmental protections of this **endangered area**.

- Part 9 – This proposal **does not address** that the trails are not supposed to be used as streets, even for vehicles that are with public works or parks & Recreation departments.
- Part 10 – There is **no element** of qualitative or quantitative mitigation for stormwater for trails or bridge crossings.
- Part 11 – The ordinance states that the development **cannot restrict** the flood plain.
- Part 12 – There are two trailway parking lots in the city that are fraught with **problems of vandalism** because of poor design. Signage needs to include postings that the water is 303(d) listed (**unsafe**) as recommended by the local health department.
- Part 13 – Water quality facilities **should not be built** in flood plains as this violates the shoreline management act.
- Part 14 – The wetland permit **should be nullified** since the wetland has been **incorrectly noted** as class 3. Bridge designs harden the shoreline, and this is a **violation** of the regulation as well as the shoreline management act.
- Part 15 – Landfills should be permitted only when proposed action will not **adversely impact** a habitat.
- Part 16 – **No successful removal** of reed canary grass or Himalayan blackberry Japanese Knotweed have ever been noted without sustained and combined mechanical (manual) and herbicidal management. Without proper management, herbicides used to remove invasive plants would simply migrate into the stream and cause further **degradation**.
- Part 17 – Underwater sewer pipes, in accordance with this policy, **should be removed** as part of a watershed management program or plan, but there is **no indication** that this is planned in the recent Surface Water Management Policy report of which the Greenway Project is a major component.

## Part 1

The Burnt Bridge Creek Greenway project application, as written, violates the Shoreline Master Program (as overseen by the state) various ways.

This application allows untreated stormwater to enter into wetlands or the creek. It allows for landfill in wetland habitat and plans for hardening of shoreline banks at stream crossings through proposed bridge designs. These elements reduce floodways and exacerbate flooding through fragmentation of the habitat. It places water quality treatment facilities in a flood plain or wetlands associated with waters of the state.

This application also violates Vancouver Municipal Code (the wetlands ordinance and the stormwater ordinance). The purpose of the stormwater ordinance is to minimize the impervious surfaces in a development plan. This application seeks to maximize impervious surface with great lengths of paved trails that range from 20 feet to 6 feet wide, all without proper stormwater controls as specified by the stormwater ordinance. Paved trails are not exempt from stormwater control requirements. The proposed parking lot does indicate stormwater control, but the staff report states that stormwater control is not necessary for the paved trails. This is erroneous.

There are a number of passages in the staff report that state designs have not yet been completed, and therefore the specifications are not yet available. This is the only forum where the public can comment on design specifications – therefore, the permit should be withheld until such time as the application is complete for public review in a timely fashion in order to satisfy the public’s right to due process. Sections that do not have adequate detail for public review are wetland banking standards include: on page 29 -- “The proposal includes provisions for wetland banking,,,Again there are no standards in the ordinance as it is indicated as reserved for future use.” On page 32 is states: “An integrated chemical and pest management plan will be required.” -- The city has no such plan at this time. And the Army Corps of Engineers must approve the placement of dredging spoils, and this has not been achieved. The trails are proposed to be built with landfill from dredging spoils.

## Part 2

Policy #21 – “All shoreline developments, uses, and activities should be located, designed, constructed, and managed to avoid, and if not avoidable, minimize disturbance of and impacts to the environment and its resources.”

Finding – The application indicated that a portion of the proposal is aimed at restoration of the degraded flood plain area of Burnt Bridge Creek.

Rebuttal – The building of trails and bridges in a flood plain is in violation of this policy as well as the shoreline master program, especially since the wetland is not properly classified. Burnt Bridge Creek is 303(d) listed, and this classification requires higher standards of protections for the wetland areas. The “aimed restoration” of a portion of the flood plain does not mitigate the hydrological and habitat fragmentation that will occur with the building of raised trails – these raised trails will in fact act as dikes that will negatively impact the functionality of the flood plain and the wetland system as a whole. Furthermore, the “aimed restoration” does not use best management practices or best available science. It appears that the design is intended to satisfy required mitigation from the city’s damage to a different watershed using wetland banking. The methods employed in this application will not provide for substantial or long-term success from the designed mitigation projects.

### **Part 3**

Policy #26 – “ Ensure coordination of all environmental protection, preservation, and enhancement programs and regulations.

Finding – The project is subject to review by WA Department of Fish & Wildlife, WA Department of Ecology and US Army Corps of Engineers among others.

Rebuttal -- The City categorizes the project area as a Class 3 watershed. The Joint Aquatic Resource Permits Application process does not allow the WA Dept. of Fish & Wildlife to review whether the classification is accurate. The WA Dept. of Fish & Wildlife has defined Burnt Bridge Creek as a salmonid stream. This definition also appears in the Vancouver Wetland Ordinance. On page 68 of the staff report, it states “The cut throat trout are known to be in the stream and will be protected during work on the project.” Coho Salmon, an endangered species, has also been identified in the stream. The fact that these protected and/or endangered species (such as salmonids) are present in the stream requires the stream and the adjacent/contiguous wetlands to be classified as a category 1 or category 2 watershed. Therefore, category 3, as specified by the city for this watershed and its wetlands, is in error.

Furthermore, Burnt Bridge Creek has direct contact with Vancouver Lake and feeds into it. Vancouver Lake is a water body of state significance, and so is the Columbia River which has direct contact with Vancouver Lake. Both Vancouver Lake and Columbia River are classified as Category 1, and they are afforded the highest degrees of environmental protection and mitigation. Any wetland having direct contact with a Category 1 protected water body or watershed would also have elevated categorization status. This elevated status prohibits development that alters the wetland habitat. Thus, the city has incorrectly classified the Burnt Bridge Creek watershed as Category 3. When properly classified, the work proposed to build trails and bridges as designed in this application would be expressly prohibited.

The city does not have a state approved wetland banking plan, which is necessary when wetland banking is included in the design of this project. Wetland banking should not be used in an application when there are no rules or guidelines established to ensure the coordination of environmental protection. Under the auspices of wetland banking projects, mitigation is to be designed for and applied to the same wetland type where the initial environmental damage occurred. The WA Department of Ecology has required the city of Vancouver to mitigate environmental damages sustained from a blowout of the east side sewage treatment facility. It is improper to apply wetland banking mitigation to the Burnt Bridge Creek basin (as this application does) when the initial damage was sustained in an entirely different watershed across town. No mitigation efforts have been

undertaken by the City to repair the damages to the habitat surrounding the east side sewage treatment facility. The staff report does not answer this discrepancy, even though it is clearly mentioned in written commentary, exhibit #38 attached. Under the commentary in the staff report captioned “wetland banking”, all it states is “the comment indicates that the City will be required to meet the state requirements related to wetland banking. A state agency, the Department of Ecology, has required wetland mitigation by the city, and this mitigation is required to be in the same type of wetland habitat that was first destroyed, as stipulated by state requirements. This application, therefore, does not meet state requirements for wetland banking, and therefore the elements pertaining to wetland banking should be removed in their entirety.

Under exhibit #7, Wetland Determination Staff Report, it states “Trails are allowed within wetlands and wetland buffers under VMC 20.50.250”. This code states that such trails can exist “provided that trails in wetlands shall be pervious or elevated.” However elevated trails in a flood plain or in a wetland cause hydrological dysfunction. This design calls for elevated trails with impervious surfaces which form a type of dike. These trails will require a special wetland permit. This application should be withheld until such time as the appropriate jurisdiction approves such a permit in conformance with Shoreline Management Act standards.

#### **Part 4**

The Burnt Bridge Creek Microbial Source Tracking Report, exhibit #11, stated that this study was “part of a larger effort by the City of Vancouver to develop a comprehensive Water Systems Master Plan, which aims at protecting and managing the water resources within the Burnt Bridge Creek Watershed.” This Microbial Tracking report, involving professional service contracts between the City (approved by City Council) and the Health Department cost at least \$176,000, yet there is no formal adopted management plan that has yet resulted from these actions. This application does not represent any sort of management plan for the Burnt Bridge Creek Watershed. The county and the city worked cooperatively to develop such a Burnt Bridge Creek Watershed management plan in 1995. The county formally adopted the plan, but the City refused to do the same. The plan, therefore sits idle. Before this application is permitted, the city should formally adopt the watershed management plan to ensure success of any and all mitigation efforts.

The Burnt Bridge Creek Greenway project is being touted as a “Watershed Program” according to the City’s “Surface Water Management Finance & Policy Report,” and this watershed program is described as containing program goals such as street drainage responsibilities, yet this project does not incorporate these street drainage policies to the impervious trails or bridges in the design. This surface water policy does not indicate goals to address surface water quality or ways to address contamination, which is outrageous since that is usually the main thrust of such a “Watershed Program.”

Furthermore, the Microbial Source Tracking Report includes a list of recommendations which have not been employed. First on the list was to abate septic tanks in the Burnt Bridge Creek Watershed since human microbial pollution appears to be the major contributor to E.coli in the creek. The report identifies this as a public health risk that should be addressed. The report states that methods should be sought out to increase stream flows to alleviate water quality problems. The bridge designs included in this application use culvert formats which harden the shorelines and restrict open space with solid structures. This will only decrease stream flow, not increase it. Free standing full-fledged bridges should be used, not cheap culvert structures. Affordable, prefabricated free standing bridges can be brought in by helicopter. The use of culverts with bulkheads does not minimize shoreline hardening as required by the shoreline management act and the shoreline master program.

#### **Part 5**

On page 66, the staff report states “The decision to spend the funds on this proposal rather than septic tank elimination is a policy decision and not within the purview of this application to determine that the expenditure is appropriate.” This is an erroneous statement. The city entered into a contractual agreement with the EPA and

the DOE for the Vancouver Lake Restoration Project, and that contractual agreement goes well beyond what the city is claiming as a policy decision.

This lake restoration project, which was funded federally as well as by the state, had specific requirements for watershed management in the Burnt Bridge Creek watershed.

The final version of the EPA's Environmental impact study clearly states:

"...No funds for construction (of the flushing channel/Vancouver Lake Rehabilitation Project) shall be expended (by the EPA) until such time as the following list of recommendations from the 208 Water Quality Management Plan for Burnt Bridge Creek Basin are implemented:

c. Enact ordinance(s) which prohibits septic tanks in groundwater sinks, flood plains, and area with high groundwater tables or poor soil within 200 feet of streams or direct drainage to streams.

e. Document significant progress toward implementation of the following recommendation: Require areas with known septic tank problems and all existing and new urban density development (3 or more d/acre) to connect to sanitary sewers as rapidly as possible. A quarterly report, starting with the first quarter of 1978, will be required to document this progress.

f. Document significant progress toward implementation of effective management and funding arrangements for full implementation of 208 Water Quality Management Plan. Documentation will be provided on a quarterly basis to show progress in attaining this goal."

The EPA approved the grant and awarded the financing of the Clean Lake Project based on these (as well as several other) stipulations. However, the City did not abide by these terms, and the action steps outlined above have not been implemented since the Lake Restoration Project which was completed in the early 1980's. The Burnt Bridge Greenway Project, as proposed, does not follow any sort of approved water quality management plan (208 plan or other plan). This is not a policy issue. It is an issue where a contractual agreement has been violated. The application should be amended to conform with the EPA approved 208 Watershed Management Plan in order to satisfy the terms and conditions of the contract. Approval of the 1995 Burnt Bridge Creek watershed management plan will also aid in satisfying these requirements. It makes no sense to create public access to a creek that is heavily polluted with pathogens because of septic tank failure. Policy has not dictated priorities here – contracts have. Policy #26 requires the city to ensure the coordination of environmental protections, and the lack of an approved watershed management plan violates this policy, especially when the taxpayers have already funded the appropriate studies to develop such plans, and such plans have been drafted but have not been employed.

## **Part 6**

Policy #31 – “Shoreline areas containing unique and/or fragile environmental resources should be protected from public access.”

Finding – “The project does not provide for direct access to Burnt Bridge Creek for most of its length. There are five stream crossings...some of these areas will be protected from public access.”

Rebuttal – Burnt Bridge Creek is 303(d) listed, and it is not safe for human contact. This section does not identify what kinds of protections will be employed to prevent human contact or to prevent degradation to the endangered or impaired wetland due to human presence. The trails parallel the path of the creek in many locations and come close to the shoreline. The staff report states that fencing will not be used, and this is accurate since fencing is not permitted in a flood plain. However, absent of fencing, there is no design detail that is identified as protections under this policy that prevents public access to this fragile wetland environment.



## **Part 7**

Policy #33 – “ Encourage the use of green spaces and riparian corridors as pedestrian and non-auto oriented linkages within the urban area, but only to the extent that these uses will not compromise the protection of fish and wildlife habitat, and other environmental resources. Promote a regional system of trails linking public and private open space, park and recreation resources within and between jurisdictions. Give priority to a developing paths and trails to and along shorelines of statewide significance.”

Finding -- Burnt Bridge Creek is a shoreline of the state, not a shoreline of statewide significance.

Rebuttal – Policy calls for a level of avoidance of alteration to an endangered habitat. This permit needlessly places trails in areas that are environmentally sensitive, even though there are alternative locations to place the contiguous trails. The trails can easily be redesigned further away from the shoreline of the creek. The design, as submitted, uses a loop-like system, which is entirely beyond what is necessary to promote a regional/contiguous trail system. Tail loops are not required to link public green spaces. Trails can be implemented that do not directly impact fragile streams. Additional stream crossings are a by-product of this loop design, and this is not necessary. Additional stream crossings will adversely impact water quality and quantity. The trails are designed to cross directly between water recharge retention ponds which are habitats in their own right. Such public access will adversely effect the biofiltration ability of the ponds.

## **Part 8**

Policy #27 on page 6 of the staff report reads “Promote and enable the retention and acquisition of open space/parkland within the urban area and between urban and non-urban areas consistent with park standards and as opportunities arise.”

Finding – “The land for the proposal has been acquired over several years. Some of the area of the trail is on Bonneville Power Administration land.”

Rebuttal -- The city should seek to use as much of the Bonneville Power Administration corridor in this area as possible and refrain from the extensive trail looping system to ensure proper environmental protections of this endangered area. This coordinated effort could be designed to fulfill BPA’s need to have access to the area as well. The loop design merely forces the trails to cross back and forth across the stream in order to avoid contact with BPA lands where access has not been acquired through easements. The Shoreline Master Program specifies that plans are to minimize changes to the shoreline area, and this is especially true of endangered wetlands. The bridge crossings, which are changes to the shorelines, can definitely be minimized further by re-locating the trails without these loop designs, making them more of a direct pathway through the Burnt Bridge Creek corridor.

## **Part 9**

### **#B -- Streets & Sidewalks**

This proposal does not address that the trails are not supposed to be used as streets, even for vehicles that are with public works or parks & Recreation departments. These trails are being built to the standards of a street – page 29 reads under findings for “Special Standards” -- “In general the trail meets the 20 foot requirement. However in certain areas, the trail has been reduced to avoid adverse impacts to adjoining wetland areas. Regulations state that easements must be 20 feet for public access.” The trail itself is not required to be 20 feet. In Portland and King County trails in sensitive habitat areas are noted to be 4 to 6 feet. The standard of having to build to 20 feet is an erroneous interpretation of the public access regulation.

Under regulation #36 for Public Access (page 44) it states – “The minimum width of public access easements shall be 20 feet when the trail is not located within a public right of way.” The width of the easement does not regulate the width of the trail. This proposed wide, paved trail system is not required for public access. Building to this standard is simply a way for the city to access its sewer lines throughout the area. Furthermore, there are no stormwater controls designed for these trails. The shoreline management act and the stormwater ordinance requires all stormwater runoff to be treated before it is discharged into the ground or into surface water. No stormwater treatments are included in this design. There should be gutters and grassy swales used in this design in order to collect and treat stormwater runoff from the paved trails as required. The bridge designs are also required to implement stormwater treatments, but no such element is indicated in the design. Stormwater treatments are required for any application where more than 2500 square feet of impervious surface is used.

## **Part 10**

Page 15 -- Vancouver Municipal Code 14.25 -- Storm Sewer

Finding --- “The applicant has demonstrated that the requirement of stormwater control ordinance can be met for the project.”

Rebuttal -- This statement is untrue. There is no element of qualitative or quantitative mitigation for stormwater for trails or bridge crossings, both of which create impervious surface that must treat for stormwater runoff. If trails were made with pervious materials, such as gravel or woodchips, this would not be an issue.

Stormwater NPDES standards require projects to meet minimum standards that protect 303(d) listed streams, especially where sewer tight-lines and outfalls from the storm sewer flow directly into the creek. NPDES standards will apply to this application even if there is no NPDES permit at this time. Burnt Bridge Creek fails water quality standards for nitrates, e.coli, ph, temperature, turbidity and dissolved oxygen. NPDES standards require that stormwater discharge will not contribute to continued failures of water quality or cause further degradation of the stream or wetland. Stormwater control is required for impervious surface such as paved trails and bridge construction.

Also on page 15 -- Storm Sewer

Finding -- “The majority of the impervious surfaces are trail pathways which are non-pollution generating and will not require water quality treatment.”

Rebuttal -- This statement is false. Any impervious surface of 2500 square feet or more requires water quality treatment, as subject to the stormwater control ordinance.

## **Part 11**

Page 29 – Some landfill is proposed. This is in violation of the Shoreline Management Act and the shoreline master program. Wetlands and floodways are destroyed by filling them. The trail is going to be constructed with landfill as well, which in effect creates a vast series of dikes. The trailways are designed in sequences of traffic loops. Without these loops, the use of landfill would not be necessary. As designed, the trails will hamper the operation of the flood plain in this wetland, even though some culverts are planned to mitigate this problem.

Page 31 –Finding -- “the applicant shall be required to provide further detail on provisions for cross drainage at all wetland crossings.”

Rebuttal -- The ordinance states that the development cannot restrict the flood plain. All building should reduce flooding volume. The plans show bridges that are really culverts with design that hardens the shoreline with bulkheads. The staff report indicates that bulkheads are not being used, but the culvert bridge design is using



bulkheads to support the bridge structure. It is a violation of the shoreline management act not to minimize the hardening of a shoreline. Free standing bridges should be used. Also, policy number 73 on page 56 states that bulkheads should not be used in shoreline modification since this “interrupts natural shore processes...loss of shoreline vegetation, and loss of shallow water habitat.” Bridge bulkheads violate regulation 73 since they will create these adverse impacts on the shoreline. The staff report findings indicate that no bulkheads are being used under policy number 73 and 74, but this is erroneous.

## **Part 12**

### Parking lot

There are two trailway parking lots in the city that are fraught with problems of vandalism because of poor design. The lots on Alki Road and Fruit Valley Road are all hidden without being openly visible from the street. Vandalism happens regularly at both of these locations. The city should incorporate clear sight lines for the parking lot and work with the neighborhoods to install safety provisions for the proposed parking lot for this application in order to prevent the creation of another attractive nuisance.

### Page 35

### Signage

Signage needs to include postings that the water is 303(d) listed and recommended by the local health department. Burnt Bridge Creek is not safe for human contact and this creates an attractive public nuisance. The staff report states that “signs” have been posted in the watershed that indicate the public’s health risk by exposure to this water. The only signs that I am aware of are two that are posted at the beachfront on Vancouver Lake near the swimming facility. Those signs are not in the Burnt Bridge Creek Watershed Basin. If there are more signs, I would appreciate a list noting where they are.

## **Part 13**

### Page 38

### Flood management

Water quality facilities should not be built in flood plains as this violates the shoreline management act. Historical floods have shown that they will contribute contamination to the shoreline environment. The facility on the west side of Andresen Blvd. currently spills directly into the creek. This facility is not working properly because the volume of water being collected is too high. This problem should be corrected with the design and implementation of upland retention ponds. Repeating this malfunction with another similar facility will only worsen this issue, and it would be a violation of regulation #79. “Surface water runoff shall be minimized as well as controlled and treated on site so that water quality and receiving shoreline properties and features are not adversely effected.”

Findings for this regulation 79 state that “the proposal includes the creation of water quality facilities to improve the quality of surface runoff into Burnt Bridge Creek.” The creation of the proposed facility is ineffective and will contribute to more contamination of the creek and the wetland. Regulation 79 prohibits the introduction of stormwater into flood plains, wetlands or surface waters where they are untreated. Furthermore, stormwater facilities are allowed in class 3 wetlands – since this wetland is incorrectly classified and should be a class 1 or 2 area, this stormwater facility should not be allowed.

Vancouver Municipal Code 14.26.135, titled “Restrictions for Special Protection Areas,” states, “New infiltration facilities...shall not be permitted for class 1 or 2 in special protection areas.” The presence of

protected or listed endangered species in Burnt Bridge Creek, and the creeks connectivity to Vancouver Lake, categorized as Class 1, indicate that this Greenway Project has wrongly classified the Burnt Bridge Creek channel as Class 3. The water quality facility noted above would be prohibited with proper classification of this watershed.

This proposed water quality facility should be created through the purchase of a portion of the Ono property, which is outside of the floodplain. The 1995 Burnt Bridge Creek watershed management plan (achieved through cooperation between the city and Clark County) allowed for storm water treatment facilities outside of the flood plain in this location. At that time, the plan recommended for the purchase of the Ono property. Clark County formally adopted the plan, however, the city refused to adopt it. The 1995 Burnt Bridge Creek watershed management plan should be implemented to address such issues as water quality facility placement. There is no management plan to incorporate best management practices or best science at this time in this watershed. A watershed management plan is required to build and plan such a project to standard.

#### **Part 14**

Regulation 45 -- “The creation of new lands by diking, draining or filling tidelands, tidal marshes, or wetlands should be prohibited except where expressly permitted in accordance with an approved wetland permit.”

Rebuttal – The wetland permit should be nullified since the wetland has been incorrectly noted as class 3. The wetlands in the Burnt Bridge Creek basin should be noted as class 1 or 2. Class 2 for salmonids in the stream, class 1 for the presence of endangered species as determined by Fish & Wildlife Dept. Class 1 should be noted for the wetland since Burnt Bridge Creek connects to Vancouver Lake, another Class 1 area. The application in effect creates dikes that cut through the wetland in the form of trails that will fragment the hydrological elements of the habitat. Landfill is also proposed to build these trails. Landfill and diking are prohibited in wetlands that are properly classed.

Regulation 47 – “Equipment shall be located, designed, installed...to prevent or minimize the need for shoreline defense and stabilization measures and flood protection works.”

Rebuttal -- Stabilization is being used in the design of culverts and bulkheads in the bridges. The bridge design hardens the shoreline, and this is a violation of the regulation as well as the shoreline management act. Free standing bridges should be used, not culverts. The finding states that shoreline stabilization is not being used – this is a false statement relative to the bridge design.

Policy 77 – page 57 – putting dredge spoils back in wetlands to build up trails is in violation of city wetlands policy that prohibits landfill in wetlands. Dredge spoils are proposed to landfill in order to place the trails. Dredge spoils should be placed in upland locations outside of the wetland. Regulation 234 states that dredge placement must be approved by Army Corps of Engineers. Approved sites have not yet been designated. Sites must be approved to meet this requirement. The permit should be withheld until approved by the Army Corps of Engineers.

#### **Part 15**

Page 63 – Regulation 46 – Landfills should be permitted only when proposed action will not adversely impact a habitat. Landfill is not enhancing a wetland habitat, it is being done to build a trail. This is confusing public access and recreation with habitat improvements. In short, protected wetlands do not make very good park spaces for public access because of the conflict between environmental protections for endangered or impaired wetlands and public parks. The uses for each have different levels of development standards. Environmental protections are exclusive. Public access is inclusive. The two do not mix well in this application. The shoreline management act encourages development along shorelines, but the spirit and intent of this act is directed toward marine environments and ocean beaches and lakefronts. They were not intended for drainage basins that are

occur to collect stormwater. Because of this conflict, this plan should be revamped since it will cause further degradation to the wetland, again, a violation of the wetlands ordinance and the shoreline master program.

## **Part 16**

Page 48 – Regulation 49 – "The use of herbicides and pesticides to remove invasive species from streams and wetlands shall be prohibited except when no reasonable alternative exists, and it is demonstrated that such activity is in the public interest."

Finding – "These herbicides are to be used to remove reed canary grass, blackberries and other invasive plants." And "Exotic/invasive plant species are proposed to be removed as part of this project."

### ***Rebuttal:***

#### **Removal Problems**

- No successful eradication of Reed Canary Grass, Himalayan Blackberry, or Japanese Knotweed has ever been documented. It is a billion dollar problem in this state.
- A limited measure of success has been noted when sustained manual and chemical management has been aggressively applied over a long period of time. Still, this is diminishment, not eradication.
- For example, attempts have been made to remove reed canary grass by digging as much as three feet down, and the plant still grows back.
- Efforts are being made to obtain federal funds to experiment with new herbicides that are injectable into Japanese Knotweed. Planners should wait until results are determined on these new efforts before attempting other mitigation.
- A squirt of herbicide here and there over hundreds of acres will not show positive results in eradication of these invasive species, and would, therefore, be a waste of time and money.
- And-if they suddenly killed off all the canary grass in one shot, massive erosion would occur.

#### **Herbicide Contamination of Stream**

- If you spray herbicide on an aquatic plant, it is going to end up in the water.
- Without proper management, the herbicides would simply migrate into the stream and cause further degradation.
- The city does not have a pest or chemical management policy or manual of operations
- Without this scope, how can the proper permits be given?
- What would determine parameters of proper protocol?
- How will the City hire and monitor contractors without guidelines?
- How will the City enforce policy that is non-existent?

The findings state such a policy will have to be created. It is irresponsible to approve this proposal when such important infrastructure is not in place. To say, "Trust us to figure out the details later" is not acceptable.

### **Wetland Banking**

- The city has previously been known to use clamshell scoop machines to remove aquatic plants, and they have done so without permits in place and without proper oversight.
- As a result, the city was required to perform restoration to wetlands near Andreesen and Divine Road. Where are the special permits noted within the application ?.
- It appears that this mitigation is designed to use wetland banking for damage to the wetland by the east side sewage treatment facility.
- Wetland banking rules require mitigation to take place in the same type of wetland that was originally damaged. Attempting to remove invasive species from Burnt Bridge Creek watershed does not satisfy the state requirements for mitigation to damaged wetlands from the east side sewage treatment facility.
- Furthermore, there are aquatic weeds that are exotic and invasive in this watershed that will require special permits for their removal since they are within an endangered or impaired stream.

### **Phytophthora**

- Wide trails with impervious surfaces creates high soil moisture and elevates temperatures.
- These conditions are conducive to Phytophthora, a fungal infection that kills trees and native shrubbery. Trees in other trail systems within this county are dying from this disease. Narrowing the trails will help protect the trees, a valuable and protected natural resource.

Page 48 of the Staff Report Under Policy#21 states "Disturbed areas will be planted with native herbaceous, shrub, and tree species designed to increase the diversity of the vegetation along the creek..."

- Drawings show trees to be planted along pathway-not shoreline.
- Microbial Source Tracking Report recommends trees be planted along shoreline of creek to shade it & reduce temperature.
- Lowering temp. lowers e.coli and fecal coliform counts in hot summer months.
- Any trees planted need to have protection around trunks due to nutria and beavers. They recently devastated a tree planting along Salmon Creek.

### **Summary**

- The City is lacking in expertise in this area based upon past transgressions.
- Proper infrastructure to safely, competently, and adequately carry out this proposal is non-existent.
- Adequate management practices are not being employed and current scientific findings about wetland plant and habitat are being ignored.

## Part 17

On page 67 of the Staff Report it states that sewer lines were installed during the 1970's that are made of concrete and use rubber gasket joints. These pipes are within the creek's flow. The Shoreline Master Program states under Utilities, Policy #35, Regulation #75, "All underwater pipelines transporting liquids intrinsically harmful to aquatic life or that are potentially injurious to water quality are prohibited."

These underwater sewer pipes, in accordance with this policy, should be removed as part of a watershed management program or plan, but there is no indication that this is planned in the recent Surface Water Management Policy report of which the Greenway Project is a major component. The staff report indicates that the city monitors and tests these underwater sewer lines, yet the city has completely stopped all water quality monitoring of Burnt Bridge Creek since 1999. Water quality testing should resume, and the city should actively pursue a Total Maximum Daily Load study to carefully monitor the creek flow since it fails water quality standards, and has failed them for many years as a 303(d) listed stream. Microbial testing indicates that there are trace amounts of e.coli stemming from sewer systems, and it is known that over time, these concrete systems degrade and their seals fail causing sewage to leak into the stream.

On page 66, the staff report, under the caption "Burnt Bridge Creek as a hazard to human health" the findings state Dave Howard, water quality coordinator for WA State Dept. of Ecology indicated that "health hazards could occur from physical contact with the creek." This is due to the contaminants in the water.

Policy #18 on Public Health and Safety, Regulation #40 of the Shoreline Master Program states "All shoreline uses and modification activities and their associated structures and equipment shall be located, designed, installed, constructed, conducted, managed, operated and maintained so as no to be a hazard to public health and safety."

The staff report indicates that this project does no "encourage contact with the water" but it does not specify how it will prevent the hazard to public health and safety, particularly when the trail parallels the creek at various locations, sometimes very closely. Furthermore, the contamination is not limited to the creek flow itself. The surrounding wetlands that are contiguous to the creek also indicate dangerous levels of e.coli, and there is no indication how this plan will mitigate this. Creating public space in advance of dealing with the contaminant issues is a violation of this Public Health and Safety regulation, and therefore this project creates an attractive public nuisance.

Also according the Staff Report, the Clark County Health Department has not responded to this public health issue, and this needs to be addressed. The health department has been notified that septic tank effluent is entering Burnt Bridge Creek directly through outfalls of the stormwater system, and this has been validated by lab results. This is a violation of the Clean Water Act, and it must be mitigated to satisfy the public health and safety regulations.

Policy #15 of the Shoreline Master Program regarding Public Access states,

"Provisions for adequate public access shall be incorporated into shoreline development unless...health and safety hazards to the public exist which cannot be prevented by any practical means." Either practical means should first be employed to address the contaminant in the water, or the public access portions of this "watershed program" must be re-evaluated due to public health risks. The trails should be moved to be as far away from the creek as possible.